

MINUTES

MONTANA SENATE 58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON LOCAL GOVERNMENT

Call to Order: By **CHAIRMAN JOHN C. BOHLINGER**, on March 18, 2003
at 3:05 P.M., in Room 335 Capitol.

ROLL CALL

Members Present:

Sen. John C. Bohlinger, Chairman (R)
Sen. John Esp, Vice Chairman (R)
Sen. Jerry W. Black (R)
Sen. Brent R. Cromley (D)
Sen. Jim Elliott (D)
Sen. Kelly Gebhardt (R)
Sen. Bill Glaser (R)
Sen. Rick Laible (R)
Sen. Jeff Mangan (D)
Sen. Carolyn Squires (D)
Sen. Mike Wheat (D)

Members Excused: None.

Members Absent: None.

Staff Present: Leanne Kurtz, Legislative Branch
Phoebe Olson, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 298, 3/7/2003; HB 416, 3/7/2003;
HB 512, 3/7/2003; HB 610, 3/7/2003
Executive Action: HB 610; HB 298; HB 416

HEARING ON HB 512

Sponsor: REPRESENTATIVE JOHN SINRUD, HD 31, Bozeman

Proponents:

Jennifer Magic, Gallatin County
Harold Blattie, MT Association of Counties
Howard Gipe, Flathead County
Mona Jamison, Gallatin County
Roger Halver, MT Association of Realtors

Opponents:

None

Opening Statement by Sponsor:

REPRESENTATIVE JOHN SINRUD, HD 31, Bozeman explained this bill would allow property adjacent to an existing zoning district to opt into that plan through the approval of the county commissioners. He maintained it was short and sweet, and he let the proponents speak and made himself available for questions.

Proponents' Testimony:

Jennifer Magic, Gallatin County said Gallatin County had 16 zoning districts at the present time and were looking at having 16 more in the near future. She said the purpose of this bill would be to give them a different option in the zoning world; to expand existing zoning districts and make them bigger. She said from her department's perspective this is much more efficient than creating additional zoning districts. She thought it was straight forward and she would answer questions.

Harold Blattie, MT Association of Counties said this was a MACO resolution brought to his membership by Gallatin County. He said the issue did affect other counties as well. He thought the bill was very straightforward and allowed for efficiency in the area of zoning districts. He urged the committees support.

Howard Gipe, Flathead County said they were in support of the bill.

Mona Jamison, Gallatin County said she was in support of HB 512. She reiterated that these zoning districts were created by the people. She said at the present time there was no way to expand the districts if there were citizens on adjacent property who

would like to be added to that district. This would allow citizens to become a part of those districts, rather than creating new districts. She said this was citizen driven and followed the same procedure as the creation of a zoning district, and fills a blank in the statute. She urged the committees support.

Roger Halver, MT Association of Realtors said his organization was in support of the bill. He asked for the committees support.

Opponents' Testimony:

None

Questions from Committee Members and Responses:

SENATOR JOHN ESP said Mona Jamison had testified the exact same procedure for creating a zoning district was used in this bill, he thought the zoning district legislation had a landmass criteria included, he wondered why that was left out.

Mona Jamison referred the question to Jennifer Magic.

Jennifer Magic replied 60% of the freeholders, owning at least 50% of the landmass vote for the district. She stated it was her understanding they would follow that procedure. That procedure would transfer to additional land being drawn into the existing zoning district and would require the same vote and percentage of landmass.

SENATOR KELLY GEBHARDT asked if you got a new area that was to be added to an existing zoning district if they would follow all the rules of the present zoning district or if they would implement their own rules.

Jennifer Magic replied the idea was for them to hop on board of the existing district and follow existing regulations. She said the thought was not to come up with new regulations but to utilize existing ones.

SENATOR RICK LAIBLE said Jennifer Magic spoke of some existing voluntary zoning districts and she had explained there were more on the way. He wondered if she knew the percentage of landowners that had petitioned for these districts.

Jennifer Magic replied she had not been a part of the creation of any of these zoning districts, being that she had only been with Gallatin County for six years. She assumed there had been protests within some of the existing zoning districts. The public

hearing process before the county commissioners was supposed to help that protest to some degree, and answer questions and get people out of the district if they truly have problems being in it. She said really the idea with these zoning districts was to create a contiguous area, so there was the potential for a land owner to be in the middle and not want to be zoned when the rest of his neighbors do. If that was the case he becomes part of that zoning district.

SENATOR LAIBLE asked if it was like minded people who want to be included in a zoning district why was the requirement 60% and not 100%.

Jennifer Magic replied that 100% is a pretty high bar to establish in this particular arena.

SENATOR LAIBLE said if they want to be part and you don't have to include someone who doesn't want to be a part, like minded would have to be 100%.

Jennifer Magic replied like minded are a majority of the land-owners.

SENATOR LAIBLE expressed then not everyone wanted to take part.

Jennifer Magic replied not necessarily, but if there is strong degree of opposition to this, the county commissioners would have the option to make some changes or manipulate the boundaries so those folks are not in the zoning district.

SENATOR LAIBLE asked in the new requests for zoning districts that had been submitted in Gallatin County, if she remembered the ratio of those in favor of the new district to those who were not.

Jennifer Magic said they did not have any districts that far along that would give her those kinds of percentages.

SENATOR LAIBLE wondered, when an application was submitted if they knew which pieces of property were included and which were not.

Jennifer Magic replied they do but they hadn't even gotten to that step yet. She maintained all of this was hypothetical.

SENATOR LAIBLE asked the sponsor if he would mind changing the zoning percentage from 60% to 85%.

REPRESENTATIVE SINRUD said what was important in owning property was being able to use it for what one wishes to use it for within constraints. Obviously you cannot grow a pig farm next to a residential subdivision. There are certain clarifications about property rights. He was skeptical that you would be able to get 85% of property owners to agree. He would probably agree with that, but he struggled with it. He clarified that 76-2-101 says that "for the purpose of this part, the word district means any area that consists of not less than 40 acres". He believed that if you had a twenty acre lot you couldn't join the district. He believed that in that scenario you would need three or four people to add up to 40 acres and then they would be able to join. Also in subsection 5, "if freeholders representing 50% of the titled property ownership in the district protest the establishment of the district within 30 days of its creation, the board of county commissioners may not create the district." He maintained there are some constraints and it was not an easy yes or no. He hoped that answered the question.

SENATOR LAIBLE clarified that the sponsor was saying all of the requirements in 76-2 part one would be applicable in section one of this bill.

REPRESENTATIVE SINRUD believed that was correct. He thought it would be an additional subsection 6, an additional way to add or move into a zoning district.

Leanne Kurtz replied that the definition of district, "meaning any area that consists of not less than 40 acres" would apply because that applies to the whole part, but the protest of 50% would not apply to this new section because that is only for creation of a new district.

SENATOR JEFF MANGAN asked the sponsor for a yes or no answer. Would you be acceptable to changing 60% to 85%.

REPRESENTATIVE SINRUD answered yes.

SENATOR MANGAN asked Jennifer Magic what her feeling would be on changing 60% to 85%.

Jennifer Magic replied that it would seriously hamper them in creating these new districts. She believed it was a high percentage to obtain.

SENATOR CAROLYN SQUIRES asked if Harold Blattie knew Missoula's feelings on the subject.

Harold Blattie replied he did not recall. He turned in some language he had drafted that would incorporate Senator Laible's bill that changes the percentages to make it apply to this.

EXHIBIT (los57a01)

SENATOR SQUIRES asked the sponsor what zone 101 was.

REPRESENTATIVE SINRUD replied that zoning 101 allowed people to come together to create a zoning district that would maintain the intent of why they moved there, and why they lived there.

SENATOR SQUIRES stated if it's housing it's housing, and if it's industrial it's industrial.

REPRESENTATIVE SINRUD replied the zoning requirements would define what you could do.

SENATOR JIM ELLIOTT said he did not think section one required the county commissioners to act on the referendum of the people, he believed it was permissive.

REPRESENTATIVE SINRUD replied that was correct. They may act upon that. They could even change the district or the requirements within that district.

SENATOR ELLIOTT commented that, as they well knew, 40% of the electorate could play hob with a campaign and an elected official. He believed that was a good control. He commented that they were constantly setting standards by which to make decisions. Fifty percent, fifty percent plus one, two thirds, and so on. Hypothetically, the higher the standard the more important the issue. He said what they were faced with here, and in almost any situation of the same type, was choosing the tyranny of the majority over the tyranny of the minority. Personally, he believed 60% was a reasonable number, especially in light of the fact the commissioners are not bound by the decision.

REPRESENTATIVE SINRUD replied he would agree. He understood what the purpose of zoning was and he deals with this industry constantly. He said it was to create laws so you knew exactly what could and could not be done. He said in some instances you can understand Senator Laible's concerns because the majority had taken over the minority, and not necessarily agreed on zoning districts, which are very contentious, especially in Montana with the strong feelings about property rights. He said they, as elected government officials, need to look at what is really best for the future of this specific area. That is where the county commissioners have a great weight upon their shoulders. He agreed with both premises. He did not feel it was right for the majority

to squelch the minority. He hoped that every county commissioner would take the 40% and their opinions and thoughts very seriously.

{Tape: 1; Side: B}

SENATOR JOHN ESP asked the sponsor if they could figure out, within the title of the bill, to do, in essence, what Mr. Blattie had suggested, if he would consider that a friendly amendment.

REPRESENTATIVE SINRUD replied he would like to look at it first. He said he believed it made it more clear and would be alright with that.

SENATOR GEBHARDT asked what Mona Jamison thought about having the landmass included; was the 50% appropriate and then was the 85% appropriate.

Mona Jamison replied that first the intent was to have the additional land procedure reflect what was required for the creation. She believed Mr. Blattie's language would cover that better, and make it more clear. As to the 85% with all do respect, she believed super majorities were hard to get. She believed if the minority had a compelling reason, or there was a takings issue, she thought they could ask the county commissioners to exercise their discretion to deny it, not withstanding the fact that percentages were met. She would prefer the 60% figure stay intact.

SENATOR LAIBLE asked Mona Jamison if she thought 60% of the land owners could go with a volunteer zoning district and zone an area against a ranchers will, to be open space and perpetuity.

Mona Jamison said she believed section 76-2-109 to be significant. It states "No planning district or recommendations adopted under this part shall regulate lands used for grazing, horticulture, agriculture, or the growing of timber." She believed that to ban something was the extreme form of regulation, and she did not believe they could do that in a 101.

SENATOR LAIBLE said so based on your legal experience, you feel that one section would prevent neighbors from zoning against a farmer or rancher to ever develop his land.

Mona Jamison said she did not believe they could do that.

Closing by Sponsor:

REPRESENTATIVE SINRUD said this was a simple bill, should people be allowed to go ahead and join an existing zoning district. In his opinion they should. If you look at the 60%, he knew Senator Mangan wanted a yes or no answer and he did not know what to say besides he thought 60% was probably fine. He maintained these were difficult situations. He said this was to allow people to join voluntary districts. He urged the committee to give the bill a Do Pass.

HEARING ON HB 298

Sponsor: REPRESENTATIVE CINDY YOUNKIN, HD 28, Bozeman

Proponents:

Jennifer Magic, Gallatin County
Mona Jamison, Gallatin County
Howard Gipe, Flathead County

Opponents:

None

Opening Statement by Sponsor:

REPRESENTATIVE CINDY YOUNKIN, HD 28, Bozeman said HB 298 involved exemptions from subdivisions. The two areas of law you see in the bill, 76-3-201 and 76-3-207 provide for certain types of provisions for lands which are exempt from subdivision review. In growth areas, such as Gallatin County, these exempt divisions are quite numerous. These types of divisions do require some processing by the county and the division is done for the benefit of the proprietor not the county or the taxpayers. Processing of the paperwork to create a parcel exempt from subdivision review and making sure the division is in fact one that is exempt from review takes some paperwork and county employee time. This processing should not cost the county and general taxpayers, the cost should be born by the applicant. That is why she agreed to carry the bill. She said on line 27 of page one and line 27 of page two, the house committee inserted the words "commensurate with cost". So the governing body may establish a fee commensurate with cost to be paid by an applicant. She suggested that a cap of \$50 be put in. She said it was to the benefit of the counties to recoup some of those costs however the public needs to be comfortable with whatever that amount would be. She let the proponents and opponents takeover.

Proponents' Testimony:

Jennifer Magic, Gallatin County said she had been a planner in Montana for the past eight years and it surprised her they had not been able to charge a fee for this process. She maintained in Gallatin County they accepted applications and ran exemptions through a public hearing and review process. She stated these exemptions did require a review because some people try to evade subdivision review, so these must be reviewed to determine if they meet the criteria for each exemption. They make sure the surveys are correct, and then schedule hearings with the county commission. She said her staff spends an average of 4 to 5 hours per exemption. She said there were exemptions that were atypical that could take days if not months to process. She maintained that it was not always a simple process. She said the county has a fee schedule for all their different process' and if this were to pass they would follow that process. She maintained Gallatin County had fees in the mid to high range for the state but that they were definitely not on the highest end of that range. She said they published notices in papers regarding fee schedules and tried to re-review schedules to make sure the fees are appropriate for the times. She maintained that they were constantly adjusting them. She thought it was more appropriate to set the fees on a local level than to set it forth in the bill. She asked the committee for their support.

Mona Jamison, Gallatin County asked the committee to support the bill. She said they would support the bill with the cap but urged the committee not to do that. She asked the committee to follow along with her handout as she gave her testimony.

EXHIBIT (los57a02)

Howard Gipe, Flathead County said they would be interested in reasonable fees. He said they had around fifty exemptions. He maintained they supported the bill and asked the committee do the same.

Opponents' Testimony:

None

Questions from Committee Members and Responses:

SENATOR ELLIOTT said he believed there was a statute requiring the State of Montana to recover their costs commensurate with their output, he wondered if Mona Jamison was familiar with that statute.

Mona Jamison replied that one had slipped by her.

SENATOR ESP said Mona Jamison had talked about unfunded mandates and the amount of time that was spent on these things. He wondered if she would agree we pay taxes for county governments to provide services in a lot of areas, this being one of them, and the people that might apply for an exemption might have been paying taxes for years and not using other services like schools and so forth. He wondered if that was an accurate statement.

Mona Jamison replied it absolutely was.

SENATOR LAIBLE said that on page 2 line 23 the bill stated "within a platted subdivision filed with the county clerk and recorder, a division of lots that results in an increase in the number of lots to which redesigns or rearranges six or more lots must be reviewed and approved by the governing body and an amended plat must be filed with the county clerk and recorder." He asked for clarification on why that would be exempt.

Mona Jamison asked they refer the question to someone else.

SENATOR ESP replied that is something that is not exempt. If you read sub 2 right above it.

SENATOR LAIBLE replied he did not read it that way and would like Jennifer Magic's opinion.

{Tape: 2; Side: A}

SENATOR LAIBLE restated his question.

Jennifer Magic replied that it was in a platted subdivision so that is an existing subdivision, someone who wants to come in and do a boundary realignment for six or more lots. They consider that an exemption.

SENATOR GEBHARDT asked if plats were reviewed by an examining land surveyor when they did a boundary change.

Jennifer Magic said the clerk and recorder's office reviewed them as well as her office. She maintained they did not have a land surveyor on staff.

SENATOR GEBHARDT asked if she was good with geometry.

Jennifer Magic replied that the deputy clerk and recorder and the clerk and recorder do have some knowledge but they do rely on the stamp of the surveyor who is working for the applicant.

SENATOR GEBHARDT said the reason he asked that, was because he believed you were supposed to have it reviewed by an examining land surveyor, an other guy who has the stamp. If that is the case you would have to shop around quite awhile to find someone to do it for \$50.

Closing by Sponsor:

REPRESENTATIVE YOUNKIN thanked the committee for the questions. She said yes, taxpayers do pay for general services of government, but she believed this was not a general service, it is something someone is asking for. She said, the alternative would be to not have any exemptions to subdivisions. She said, whatever is being asked for, it costs money to do and it is for the benefit of the person asking it to be done. She thought it was a good thing for the counties to have the ability to charge for this if they needed to. She left it up to the committee to decide on the \$50 amendment. She thanked them for a good hearing.

HEARING ON HB 416

Sponsor: **REPRESENTATIVE CINDY YOUNKIN, HD 28, Bozeman**

Proponents:

Don Hargrove, Gallatin County
Harold Blattie, MT Association of Counties

Opponents:

None

Opening Statement by Sponsor:

REPRESENTATIVE CINDY YOUNKIN, HD 28, Bozeman said the bill was very simple and the substance was on line 11 of page 1, where it changes 15 to 30 days. She said all the other changes were grammatical type changes. She said by increasing the amount of time is necessary to allow people enough time to get the protests handed in. She thought 30 days was quite reasonable.

Proponents' Testimony:

Don Hargrove, Gallatin County said 15 days was not long enough. He said it was practical to change it to 30 days. He asked the committee to support the bill.

Harold Blattie, MT Association of Counties said they rose in support of the bill. He said the time increase would be no imposition on the process and he urged the committees support.

Opponents' Testimony:

None

Questions from Committee Members and Responses:

SENATOR ESP asked what the word liable on line 12 meant to the sponsor.

REPRESENTATIVE YOUNKIN replied it was existing law, she would interpret that to mean any owner of property which might be responsible for any assessments. It is a liability to the property owners.

SENATOR ESP, just thought that the word might be archaic and he was surprised, with all the attorneys in the House, it stayed in the bill.

Closing by Sponsor:

REPRESENTATIVE YOUNKIN said there was not much more to say, but 30 days is more appropriate. She appreciated their time and thanked them for the hearing.

EXECUTIVE ACTION ON HB 416

Motion/Vote: SEN. MANGAN moved that HB 416 BE CONCURRED IN.
Motion carried unanimously.

HEARING ON HB 610

Sponsor: REPRESENTATIVE BOB BERGREN, HD 90, Havre

Proponents:

Steve Wade, Montana Rural Water Systems
Bobby Broadway, Sun Prairie Village Water and Sewer

Opponents:

None

Opening Statement by Sponsor:

REPRESENTATIVE BOB BERGREN, HD 90, Havre said this was a simple bill. He said the change was on line 19. He said the bill would allow water and sewer districts to raise fees without a public hearing. He said these fees are very minimal. He said they raise their fees more than they actually need in order to pay for advertising and notices for those hearings. He said it was amended to say in any year, so there would not be any abuse. He said he would be happy to answer questions.

Proponents' Testimony:

Steve Wade, Montana Rural Water Systems said they appreciated the sponsor bringing the bill forward because they thought it was a tool that small water and sewer districts could use in meeting the needs of their customers. He reiterated that normally increases are needed because of an unforeseen expense. He said going through the hearing process costs money and a lot of times the rate increases are so small that no one shows up. He handed out some testimony from Dan Keil. **EXHIBIT(10557a03)**

Bobby Broadway, Sun Prairie Village Water and Sewer submitted written testimony. **EXHIBIT(10557a04)**

Opponents' Testimony:

None

Questions from Committee Members and Responses:

SENATOR MANGAN asked the sponsor if the amendment shouldn't say within a twelve-month period or a calendar year. Would he mind if they made that adjustment.

REPRESENTATIVE BERGREN said that was his suggestion in the House Committee. The committee did this without him. He would be amicable to a change like that.

SENATOR CROMLEY said he did not see a procedure in statute that allowed the board to increase fees.

REPRESENTATIVE BERGREN replied it was in part 4.

SENATOR CROMLEY said this section gave them a procedure to go to hearing but he did not see legally where the board has the right to raise that money at all.

REPRESENTATIVE BERGREN said he believed this section authorized that.

SENATOR ESP suggested they look on page 2 sub d, you might want to say except in the case of the previous condition.

Steve Wade responded that authority is given elsewhere in statute.

Leanne Kurtz believed it was 713-23-01.

Closing by Sponsor:

REPRESENTATIVE BERGREN said if the committee so desired some clarification about the time period he would be fine with Senator Mangan's suggested. He would appreciate their concurrence.

EXECUTIVE ACTION ON HB 298

Motion: SEN. ESP moved that HB 298 BE CONCURRED IN.

Discussion:

SENATOR LAIBLE asked if they wanted to talk about the sponsors request for an amendment.

SENATOR ELLIOTT said the people who will have the fee imposed on them have their own elected official who he believes was very capable of setting fees within the balance of what their constituents will accept.

SENATOR LAIBLE replied he only made the comment, because it was the sponsor's request.

SENATOR GEBHARDT agreed with Senator Elliott. He also said that there was a problem with setting specific amounts in code because ten years down the road they become completely inadequate.

SENATOR ESP agreed with Senator Gebhardt.

{Tape: 2; Side: B}

Vote: Motion carried unanimously.

EXECUTIVE ACTION ON HB 610

Motion: SEN. MANGAN moved that HB 610 BE CONCURRED IN.

Motion: SEN. MANGAN moved that HB 610 BE AMENDED to say on line 19, except for a cumulative rate increase of less than or equal to 5%, strike in any year and replace within a twelve month period.

Leanne Kurtz read how the bill would read with the amendment.

Vote: Motion carried 7-1 with CROMLEY voting no.

Motion: SEN. MANGAN moved that HB 610 BE CONCURRED IN AS AMENDED.

Discussion:

SENATOR LAIBLE said this allows these districts to raise their rates 5% a year without any input from the ratepayers. He wondered if that bothered anyone.

SENATOR GLASER said the rate increase was being done by the board, and they had to meet in public. He said the public input part was probably well covered.

SENATOR LAIBLE said then a board could not, just by mandate, raise the rates without having a public meeting.

SENATOR GLASER said they would have to have a board meeting and discuss this amongst themselves. They wouldn't have to take public input necessarily, but the public could be at the meeting.

SENATOR CROMLEY said he thought it was a good idea.

SENATOR ESP asked if Senator Cromley's concerns had been alleviated.

SENATOR CROMLEY thought his concerns were covered in statute 713-23-01.

Vote: Motion carried 9-1 with ESP voting no.

ADJOURNMENT

Adjournment: 4:35 P.M.

SEN. JOHN C. BOHLINGER, Chairman

PHOEBE OLSON, Secretary

JB/PO

EXHIBIT (los57aad)